## REMARKS/ARGUMENTS

Claims 1-65 are pending in this application. Claims 1-54 are rejected in the Final Office Action of April 7, 2006. Claims 55-65 are canceled in response to a previous restriction requirement. Applicants retain the right to pursue claims 55-65 in a divisional application. In view of the remarks and arguments made herein, Applicants respectfully request reconsideration of the rejections made with respect to this application.

Applicants respectfully submit that their claimed methods are non-obvious in view of Jury *et al.* (EP 0 781 510 A1, hereinafter referred to as "Jury") because Jury does not teach or suggest all of the limitations of the claimed invention. The PTO states in the Office Action that "Jury et al. clearly teach the addition of chocolate to frozen or chilled yogurt." The Jury reference does teach that "discrete pieces of shaped chocolate" and "chocolate in the solid state" may be added to yogurt; however, Applicants respectfully submit that this teaching is not sufficient to render obvious all the pending claims. There are several claim limitations found in one or more of the claims that are not taught or suggested by the Jury reference. The present claim set differs from the Jury reference by much more than just pH and $A_w$.

For example, as discussed in more detail below, many of the claims are directed toward adding a heated lipid-based mixture (such as chocolate) to a chilled filling for yogurt and then agitating the resulting mixture, none of which is taught or suggested by the Jury reference.

As another example, several of the claims require that the lipid-based mixture (such as chocolate) be pasteurized prior to added to the filling for the yogurt, which is not taught or suggested by the Jury reference.

As to claim 1 and claims depending therefrom, the Jury reference does teach that "discrete pieces of shaped chocolate" and "chocolate in the solid state" may be added to yogurt; however, the Jury reference does not teach how to keep those pieces of shaped chocolate from spoiling in the yogurt. Nor does the Jury reference teach how to keep pieces of shaped chocolate from spoiling in a filling for yogurt. Specifically, the Jury reference does not teach or suggest adding chocolate to a filling for yogurt, wherein the filling has a pH of less than 4.6. Similarly, the Jury reference does not teach or suggest the water activities claimed by Applicants. The

CCPA has stated, and the MPEP has recognized that **result-effective variables** are exceptions to the rule that discovery of an optimum value is normally obvious. (In re Antoine, 559 F.2d 618, 620 (1977); MPEP § 2144.05 II B). In Antoine, the claimed invention was directed to a wastewater treatment device with a specific volume to contactor ratio; the prior art cited by the PTO in rejecting the claims did not recognize that the treatment capacity was a function of volume to contactor ratio; the CCPA held that because the result-effective variable, the volume to contactor ratio was not disclosed in the prior art relied upon by the PTO, the case presented an exception to the rule that that discovery of an optimum value is normally obvious. Id. Here, the claimed filling characteristic of a pH of less than 4.6 is a **result-effective variable** that is not taught or suggested by the Jury reference. (See, *e.g.*, Applicants' specification, paragraphs 17 and 19.) Similarly, the claimed filling characteristic of an $A_w$ of less than 0.75 is a **result-effective variable** for maintaining the microbiological stability of the lipid based inclusions. (See, Applicants' specification, paragraph 19.) As the Jury reference does not teach or suggest either of these result-effective variables, Applicants respectfully submit that claims 1-54 are patentable over the Jury reference.

Additionally, Applicants' claimed methods are not taught or suggested in the Jury reference. The Jury reference does not teach the specific method steps claimed in Independent claim 13, *e.g.*, injecting a heated stream into a chilled filling, and claims 14-26 dependent thereon. Similarly, the Jury reference does not teach the specific method steps claimed in Independent claim 27, *e.g.*, injecting a lipid-based melt into a chilled filling, and claims 28-37 dependent thereon. Also, the Jury reference does not teach the specific method steps claimed in Independent claim 38, *e.g.*, injecting a lipid-based melt into a chilled filling of a particular pH, and claims 39-54 dependent thereon. Accordingly, since Applicants' claimed methods are not taught or suggested by the Jury reference, Applicants respectfully submit that claims 1-54 are patentable in view of that reference.

Moreover, many of the dependent claims have additional limitations not taught or suggested by the Jury reference, such as a specific pH threshold for the filling, and/or a specific $A_w$ threshold for the filling, and/or a specific shape of inclusion, and/or a specific weight percent of inclusions, and/or a specific temperature below which the filling is chilled, and/or combining the filling with yogurt. Accordingly, the dependent claims are allowable over the Jury reference for additional reasons.

Applicants respectfully request reconsideration of claims 1-54 in view of the remarks made herein and respectfully request that a timely Notice of Allowance be issued in this case.

In view of the procedural posture of this case, if the present amendment does not place this case in condition for issuance, the Examiner is urged to contact the undersigned to discuss how the case might be promptly placed in condition for allowance.

Respectfully submitted,

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